

APPEAL NO. 042122  
FILED OCTOBER 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 9, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter.

The claimant appeals, contending that she is on medication and treatment for chronic pain, panic attacks and depression (which makes her totally unable to work). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fourth quarter. The claimant contended that she had no ability to work during the qualifying period. Although making some 11 job contacts during the qualifying period (December 12, 2003, through March 11, 2004) the claimant principally proceeds on a total inability to work theory. The hearing officer commented that the claimant did not have a job contact in 5 of the 13 weeks of the qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Conflicting evidence was presented on the disputed issue. The carrier contends that its required medical examination doctor was another record that showed the claimant was able to return to work, but the hearing officer discounts that report because the doctor did not take into account the psychological aspect of the compensable injury. The hearing officer found that the claimant had some ability to work, based largely on the claimant's own testimony. The hearing officer also commented in the Background Information section of his decision that the claimant failed to provide a narrative report that specifically explains how the injury causes a total

inability to work. The hearing officer discusses the treating doctor's report and comments that it is inconsistent with the accompanying functional capacity evaluation and the claimant's own testimony.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Margaret L. Turner  
Appeals Judge